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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,001	10/24/2003	William C. Phillips	1023-291US01	9336
28863	7590	05/11/2011		
SHUMAKER & SIEFFERT, P. A.			EXAMINER	
1625 RADIO DRIVE			PATEL, NIKETA I	
SUITE 300				
WOODBURY, MN 55125			ART UNIT	PAPER NUMBER
			3762	
			NOTIFICATION DATE	DELIVERY MODE
			05/11/2011	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WILLIAM C. PHILLIPS, JEREMY J. ODEGARD
and MICHAEL W. HORVATH

Appeal 2009-010594
Application 10/693,001
Technology Center 3700

Before WILLIAM F. PATE, III, MICHAEL W. O'NEILL, and
FRED A. SILVERBERG, *Administrative Patent Judges*.

SILVERBERG, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

William C. Phillips et al. (Appellants) seek our review under 35 U.S.C. § 134 of the final rejection of claims 1-9 and 11-35. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

THE INVENTION

Appellants' claimed invention is directed to a patient programmer for an implantable medical device including an external antenna for placement on the patient's body near the implanted medical device (Spec. 2: paras. [0007] and [0008]).

Claim 1, reproduced below, is representative of the subject matter on appeal.

1. An antenna for a medical device programmer, wherein the antenna defines an aperture comprising a wide end and a channel adjacent the wide end, wherein the channel is narrower than the wide end and is formed to hold a portion of an item of clothing associated with a patient by an interference fit or friction fit and thereby hold the antenna in a substantially fixed position relative to an implantable medical device.

THE REJECTIONS

The following rejections by the Examiner are before us for review:

1. Claims 1-8, 16, 18-27 and 29-35 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Cimochoowski (US 5,967,986, issued Oct. 19, 1999) in view of Wallerstorfer (US 5,478,995, issued Dec. 26, 1995), Lippert (US 6,634,563 B1, issued Oct. 21, 2003) or McEowen (US 6,810,237 B1, issued Oct. 26, 2004).

2. Claims 9, 11-23, 25, 26, 28, 29 and 33-35 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Pool (US 6,561,975 B1, issued May 13, 2003) in view of Wallerstorfer, Lippert or McEowen.
3. Claims 1-9 and 11-35 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Taepke (US 6,650,939 B2, issued Nov. 18, 2003) in view of Wallerstorfer, Lippert or McEowen.

ISSUES

The issues before us are: (1) whether the Examiner's claim construction of the words "antenna" and "antenna head," as called for in independent claims 1, 9, 18, 25 and 27-29, is reasonable, that is, whether the aperture and channel are separate from the antenna or the antenna head, (App. Br., *passim*); and (2) whether the Examiner erred in concluding that the combined teachings of either Cimochoowski, Pool or Taepke in view of either Wallerstorfer, Lippert or McEowen would have led a person having ordinary skill in the art to an antenna, as called for in independent claims 1, 9, 18 and 27-29, or an antenna head, as called for in independent claim 25, having a wide end and a channel adjacent the wide end, wherein the channel is narrower than the wide end and the channel is formed to hold a portion of clothing (App. Br. 9, 18, 25, 31, 34, 37, 40, 43, 46).

ANALYSIS

Issue 1 - Claim Interpretation

Independent claims 1, 9, 18 and 27-29 call for, *inter alia*, an antenna having a wide end and a channel adjacent the wide end, wherein the channel

is narrower than the wide end and the channel is formed to hold a portion of clothing.

Independent claim 25 calls for, *inter alia*, an antenna comprising an antenna head, the antenna head having a wide end and a channel adjacent the wide end, wherein the channel is narrower than the wide end and the channel is formed to hold a portion of clothing.

The Examiner found that (1) “it is within a reasonable interpretation of the language for the term ‘antenna’ to relate to the overall device or the device housing rather than the internal structure specifically responsible for wireless transmission of the signal” (Ans. 14), and (2) that “[a]s such, it is considered reasonable to interpret the term antenna in the context of the claims to signify the overall device and device structure as separate from the claimed antenna loop, such that the overall device or housing is that which contains the aperture of the claimed dimensions” (Ans. 14-15).

Appellants’ Specification describes an external antenna 34 including a loop-like telemetry head 74 defining a unique aperture 78 with a wide end 80 and a narrow, tapered end 82, wherein the narrow, tapered end 82 defines a channel to capture clothing (Spec. 19: paras. [0094 and [0095]). Thus, Appellants’ Specification defines the aperture 78 and channel 82 as being part of the antenna 34. Further, Appellants’ Figure 6A shows the aperture 78 and channel 82 as being part of the antenna 34.

Independent claims 1, 9, 18, 25 and 27-29 call for, *inter alia*, either “the antenna defines an aperture . . .” (cls. 1, 9, 27, 28), “an antenna defining an aperture . . .” (cls. 18 and 29), or “the antenna comprising: an antenna head; . . . an aperture defined by the antenna head” (cl. 25).

When construing claim terminology in the United States Patent and Trademark Office, claims are to be given their broadest reasonable interpretation consistent with the specification, reading claim language in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

We find that the Examiner's interpretation of the claimed invention to be unreasonable, as we find that when independent claims 1, 9, 18, 25 and 27-29 are read in light of the Specification, the claimed aperture 78 and channel 82 are part of the antenna 34, not separate from the antenna 34 as found by the Examiner.

Rejection of claims 1-8, 16, 18-27 and 29-35 over Cimochoowski in view of Wallerstorfer, Lippert or McEowen

Appellants contend that the combined teachings of Cimochoowski and either Wallerstorfer, Lippert, or McEowen does not render obvious an antenna defining an aperture comprising a wide end and a channel, as called for in independent claims 1, 18, 25, 27 and 29.

The Examiner found that Cimochoowski describes the invention substantially as claimed (Ans. 4), "but does not expressly disclose that the aperture has a wide end and narrow channel adjacent the wide end" (*id.*).

The Examiner concluded that it would have been obvious to modify the teachings of Cimochoowski with the antenna aperture capable of holding an article of clothing as taught by Wallerstorfer at aperture 47 in Figure 10, Lippert in the abstract or McEowen at loop 9 (Ans. 4-5).

Appellants contend that neither Wallerstorfer, Lippert nor McEowen cures the deficiency in Cimochoowski since neither of the references

describes the fastening element as being separate from the antenna (App. Br. 12, 20, 27).

Wallerstorfer describes that element (aperture and channel) 47 is part of fastening element 30, which is separate from antenna 16 (Wallerstorfer, *passim*).

Lippert describes an antenna 6 as being separate from loop (aperture and channel) 9 (col. 4, ll. 18-26; fig. 1).

McEowen describes an antenna as being separate from an attachment member, that is, a flexible strength member 4 having an embedded antenna 5, wherein an end of the antenna 4 is attached to a handle member (aperture and channel) 9, which attaches to a person (col. 4, ll. 50-55; col. 5, ll. 18-26; fig. 2).

Thus, Wallerstorfer, Lippert and McEowen describe the antenna as being separate from the aperture and channel.

Accordingly, we agree with Appellants that neither Wallerstorfer, Lippert nor McEowen cures the deficiency in Cimochoowski since neither of the references describes the aperture and channel as being part of the antenna, as called for in independent claims 1, 18, 25, 27 and 29.

We reverse the rejection of independent claims 1, 18, 25, 27 and 29 and claims 2-8, 16, 19-24, 26 and 30-35, which depend respectively, therefrom.

Rejection of claims 9, 11-23, 25, 26, 28, 29 and 33-35 over Pool in view of Wallerstorfer, Lippert or McEowen

Appellants contend that the combined teachings of Pool and either Wallerstorfer, Lippert or McEowen does not render obvious an antenna

defining a an aperture comprising a wide end and a channel, as called for in independent claims 9, 18, 25, 28 and 29 (App. Br. 37).

The Examiner found that (1) Pool describes an antenna that can be housed within a belt (Ans. 7), and (2) “[s]uch a housing inherently possesses the ability to have clothing pulled through the channel created by buckling the belt” (*id.*). The Examiner found that Pool “does not expressly disclose that the aperture comprise[s] a wide end and a narrow channel adjacent the wide end” (Ans. 7).

Pool describes that a wearable article that houses an antenna band includes a belt (Pool, col. 8, ll. 34-38). However, Pool is silent as to whether the buckle of the belt houses the antenna band. As such, it becomes incumbent upon the Examiner to provide an adequate basis in fact and/or technical reasoning that would support a finding that Pool’s belt buckle houses an antenna band. The Examiner has not provided adequate evidence to support the finding. Further, we do not find support for the finding.

The Examiner relies on the teachings of either Wallerstorfer, Lippert or McEowen to cure the deficiency in Pool (Ans. 7).

As we found *supra*, (1) independent claims 9, 18, 25, 28 and 29 call for the claimed aperture 78 and channel 82 as being part of the antenna 34, and (2) neither Wallerstorfer, Lippert nor McEowen describes the aperture and channel as being part of the antenna.

Thus, we find that neither Wallerstorfer, Lippert nor McEowen cures the deficiency in Pool.

We reverse the rejection of independent claims 9, 18, 25, 28 and 29 and dependent claims 11-17, 19-23, 26 and 33-35.

Rejection of claims 1-9 and 11-35 over Taepke in view of Wallerstorfer, Lippert or McEowen

Appellants contend that the combined teachings of Taepke and either Wallerstorfer, Lippert or McEowen does not render obvious an antenna defining an aperture comprising a wide end and a channel, as called for in independent claims 1, 9, 18, 25 and 27-29 (App. Br. 40).

The Examiner found that Taepke describes “an antenna that defines an aperture intended to hold the antenna on an item of clothing related to the patient, but does not expressly disclose that the aperture have a wide end and a narrow channel adjacent the wide end” (Ans. 11).

The Examiner relies on the teachings of either Wallerstorfer, Lippert or McEowen to cure the deficiency in Pool (Ans. 11).

Appellants contend that in Taepke, it is unclear from the description and figures whether antenna 22 even defines an aperture, much less an aperture that is formed to hold an item of clothing (App. Br. 40).

Taepke is silent as to whether antenna 22 defines an aperture. As such, it becomes incumbent upon the Examiner to provide an adequate basis in fact and/or technical reasoning that would support a finding that Taepke’s antenna 22 defines an aperture. The Examiner has not directed us to a particular portion in Taepke with reference to the relevant column or page number(s) and line(s) or other evidence which would support the Examiner’s finding.¹ Further, we find no teaching in Taepke that would support the Examiner’s finding.

Again, as we found *supra*, (1) independent claims 1, 9, 18, 25 and 27-29 call for the claimed aperture 78 and channel 82 as being part of the

¹ MPEP § 706.02(j) (8th ed., Rev. 8, Jul. 2010)

antenna 34, and (2) neither Wallerstorfer, Lippert nor McEowen describes the aperture and channel as being part of the antenna.

Thus, we find that neither Wallerstorfer, Lippert nor McEowen cures the deficiency in Taepke.

We reverse the rejection of independent claims 1, 9, 18, 25 and 27-29 and dependent claims 2-8, 11-17, 19-24, 26 and 30-35.

CONCLUSION

The Examiner's claim construction of the words "antenna" and "antenna head," as called for in independent claims 1, 9, 18, 25 and 27-29, is unreasonable since the aperture and channel are part of the antenna or the antenna head.

The Examiner has erred in concluding that the combined teachings of either Cimochoowski, Pool or Taepke in view of either Wallerstorfer, Lippert or McEowen would have led a person having ordinary skill in the art to an antenna, as called for in independent claims 1, 9, 18 and 27-29, or an antenna head, as called for in independent claim 25, having a wide end and a channel adjacent the wide end, wherein the channel is narrower than the wide end and the channel is formed to hold a portion of clothing.

DECISION

The decision of the Examiner to reject claims 1-9 and 11-35 is reversed.

REVERSED

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